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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,276	08/24/2001	Thomas J. Holman	S63.2-9828	3830

490 7590 02/04/2004

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER
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DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 02/04/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/939,276

Applicant(s)

HOLMAN ET AL.

Examiner

D. Jacob Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 9-16 and 18-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8 and 17 are rejected under 35 U.S.C. 102(b) as being unpatentable over Lodin et al. (US 5,460,608). Lodin discloses in Fig. 6 a stainless steel coil support member 300, a first tubular member 20 and a second tubular member 52. The support member is both rigid and flexible since the member 20 is meant to be sufficiently rigid to prevent the inner shaft from collapsing (Col. 3, lines 51--et seq.) yet flexible enough to traverse the treacherous path. The tubular members are inherently at least somewhat radiopaque.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(c) which forms the basis for all obviousness rejections set forth in this Office action:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-4, 6, 7 and 17 are rejected under 35 U.S.C. 103(c) as being unpatentable over Wang et al. (US 6,443,980) in view of Fontaine (US 5,443,498). In Fig. 5, Wang discloses a support member 14, a first tubular member (16a and 18a) and a second tubular member (16b and 18b). The first and second tubular members are welded together (Col. 4, lines 48-51).

Wang is silent regarding the material of the stent/support member 14. Nevertheless, Fontaine teaches that stents may be made of stainless steel because of their biocompatible properties (Col. 5, lines 40-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Wang's stent out of stainless steel, as taught by Fontaine, because stainless steel has desirable biocompatible properties.

The stainless steel stent is both flexible and rigid. The tubular members are inherently radiopaque at least to some degree.

Claim 5 is rejected under 35 U.S.C. 103(c) as being unpatentable over Wang et al. (US 6,443,980), in view of Fontaine (US 5,443,498), and in further view of admitted prior art.

Applicants disclose that TEFLON has a higher melting temperature than thermoplastic elastomers. Wang, Fontaine and the admitted prior art together teach these materials and a structure that meets the claim. Wang and Fontaine teach the limitations of claims 1 and 2 as described. Furthermore, Wang discloses that the sleeves/first and second support members 16 and 18 are made of elastomeric polymer.

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Fontaine teaches that the stent is made of stainless steel. However, the patent fails to specify whether the material is a thermoplastic elastomer. Nevertheless, applicants have admitted that retaining sleeves are known to be made of thermoplastic elastomers (Page 8, lines 24-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make Wang's retaining sleeves out of a thermoplastic elastomer.

Furthermore, Wang fails to disclose a polymeric material having a melt temperature in excess of the melt temperature of the inner tube. Nevertheless, Fontaine teaches that the stent may be coated with a coagulant polytetrafluoroethylene (Col. 5, lines 40-49). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wang stent to include a coagulant such as PTFE. As stated, the PTFE coated stent has a higher melting temperature than the thermoplastic elastomer sleeve. Therefore, the Wang/Fontaine/admitted prior art device meets the claim.

### ***Response to Arguments***

Applicants' arguments are moot in view of the new grounds of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

DJD  
January 26, 2004

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700